JAYARAMAN ARUMUGAM

v.

MINISTER FOR HOME AFFAIRS, MALAYSIA & ANOR.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPLICATION NO. 44-4-89]
30 MARCH 1989

ADMINISTRATIVE LAW: *Preventive Detention - Detention for 2 years - Section 4(1) Emergency (Public Order and Prevention of Crime) Ordinance 1969 - Conflict between ss. 5(2A), 6(1) - Purposive interpretation - Decision of Yang di-Pertuan Agong not communicated to applicants.*

The applicant was detained for a period of 2 years pursuant to a detention order made under the provisions of s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. The applicant applied for a writ of *Habeas Corpus.* The applicant sought to impugn the detention order on 4 grounds. In respect of the 3rd ground, the Court had to consider the conflict between s. 5(2A) and s. 6(1) in deciding the prime period for the Advisory Board to make recommendations to the Yang di-Pertuan Agong upon representations by a detainee.

Held:

[1] There was no violation of s. 5(2A) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969.

[2] It is desirable that the detinee be not merely informed of the decision of the Yang di-Pertuan Agong but he be served with a copy, so that he may know, if the Advisory Board had made its recommendations, within the period limited by law.

(Editors Note: The applicant's appeal to the Supreme Court *vide* Criminal Appeal No. 05-34-89 on 14 June 1989 comprising of Y.A.A. Tan Sri Datuk Hashim Yeop Abdullah Sani CJ Malaya, Dato Harun Hashim SCJ and Dato Mohd. Yusoff SCJ was dismissed.)

Cases referred to:

IRC v. Ayrshire Employers Mutual Insurance Association Ltd. [1946] 1 All ER 637
Magor and St Mellons Rural District Council v. Newsport Corporation [1952] AC 189
Fothergill v. Monarch Airlines [1981] AC 251
R. v. Barnet London Borough Council, ex parte Nilish Shah [1983] 2 WLR 16
Griffiths v. Secretary of State for the Environment [1983] 2 WLR 172
D.S. Roy v. State of West Bengal [1972] AIR SC 1924
Reg. v. Foreign Secretary, ex parte Everett [1989] 2 WLR 224

Legislation referred to:

Constitution (Amendment) Act 1976 (No. A354), s. 40
Criminal Procedure Code, s. 117
Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 4(1), 5(2A)
Emergency (Public Order and Prevention of Crime) (Amendment) Ordinance 1969, ss. 1(2), 2(a)
Internal Security Act 1960, s. 73(1)

For the applicant - Karpal Singh; M/s. Karpal Singh & Co., Penang
For the respondent - Md. Raus bin Sharif, SFC

JUDGMENT

Edgar Joseph Jr J:

Some two weeks ago, Counsel for the applicant, Jayaraman a/l Arumugam, at present detained at the Pusat Pemulihan Akhlak, Pulau Jerejak, pursuant to a detention order dated 18 June 1987, ("the detention order") made under the provision of s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, ("the Ordinance") authorising the detention of the applicant for two years, with effect from 20 June 1987, applied to this Court for a writ of *Habeas Corpus*, directed to the Minister of Home Affairs ("the Minister") and the Pengarah, Pusat Pemulihan Akhlak, Pulau Jerejak, the respondents herein, to have the body of the applicant brought before this Court and that he be set at liberty.

For the sake of brevity and convenience, all references herein to sections shall, unless the context otherwise requires, be to the Ordinance.

The detention order was in the following terms:

> I, the Minister of Home Affairs, being satisfied that it is necessary to make this order against the person whose name is mentioned below with a view to preventing him from committing any acts that may be prejudicial to public order or for the suppression of violence or for the prevention of crimes involving violence.
>
> | Name | NRIC No |
> |---|---|
> | Jayaraman a/l Arumugam | A0009778 |

The grounds upon which the detention order was made ("the grounds of detention") were as follows:

> That you are a member of a gang of robbers possessing firearms, operating in Kuala Lumpur and Petaling Jaya. You have involved yourself in criminal acts as follows:
>
> (i) That you were involved in an armed robbery at a sundry shop in Jalan Pahang, Kuala Lumpur, in March 1987. Following this robbery, you received your share of the proceeds thereof, being the sum of RM100.
>
> (ii) That you were involved in an armed robbery in a supermarket in Petaling Jaya in February 1987. Following this robbery, you again received your share of the proceeds thereof, being the sum of RM100.

The essential facts to be garnered from the affidavits filed herein may be stated briefly thus. On 24 March 1987, the applicant was arrested in connection with Sitiawan Report 1358/87 and Dang Wangi Report 4181/87. On the same day, he was produced before a Magistrate at Sitiawan, Perak, who ordered that the applicant be detained until 30 March 1987 pending investigations under the provisions of s. 117 of the Criminal Procedure Code. On 28 March 1987, at about 4.15 p.m. the applicant was released but immediately re-arrested with a view to action being taken against him under s. 73(1) of the Internal Security Act 1960. On 23 May 1987, at about 1 p.m., the applicant was released but one hour later he was re-arrested under s. 3(1).

I would, at this point, interpolate to mention that according to the applicant, his re-arrest under s. 3(1) was on 23 March 1987 but this was strongly refuted by Inspector Mohd Isa bin Ujang who was attached to the Anti-Secret Society Branch, Kuala Lumpur Police Headquarters, who in his affidavit affirmed to on 15 March 1989 (encl. 14), maintained that the re-arrest was on 23 May 1987 and not on 23 March 1987.

As the date of applicant's re-arrest under s. 3(1) was the basis of one of the grounds relied upon in support of the application, it will be necessary for me to make a finding upon the conflict of evidence on this point.

I would say, at once, that I have no reason to doubt the independent evidence of Inspector Mohd Isa that it was indeed on 23 May 1987 that the applicant was re-arrested. It seems to me that having regard to the time lag, it is likely that the applicant's recollection as to this event was faulty.

To resume the narrative of events, on 19 June 1987 the applicant had been duly served with copies of the detention order, the grounds of detention and the allegations of fact. At the time of such service, he had been informed of his right to make representations to the Advisory Board in accordance with the requirements of s. 5(2). On 28 June 1987, the applicant was duly escorted to the Pusat Pemulihan Akhlak, Pulau Jerejak, Pulau Pinang.

On 15 July 1987, the applicant's representation against the detention order was received by the Advisory Board and on 29 September 1987 it proceeded to hear the same. On 12 October 1987, the Advisory Board made its recommendation to the Yang di-Pertuan Agong under art. 151(1)(a).

On 7 January 1988 the Minister received a direction from the Yang di-Pertuan Agong under s. 6(2) confirming the applicant's detention under s. 4(1).

On 8 June 1988, the Advisory Board did sit and review the detention order passed against the applicant in accordance with s. 7(1). On 22 June 1988, the Advisory Board submitted a written report of the review to the Minister in accordance with s. 7(2).

Before me, Counsel for the applicant had sought to impugn the detention order on the following grounds:

(1) the applicant had been detained pending enquiries for a period in excess of the maximum permissible period of 60 days in contravention of s. 3(3).

(2) the initial period of the applicant's detention from 24 March 1987 until 28 March 1987, was illegal since there was no evidence before the Court that he had been produced before a Magistrate within 24 hours of his arrest in contravention of art. 5(4) of the Federal Constitution.

(3) the applicant's representations were not considered and recommendation made thereon by the Advisory Board to the Yang di-Pertuan Agong within three months from the date of his detention in contravention of s. 6(1).

(4) the applicant's continued detention was illegal and unlawful as the decision of the Yang di-Pertuan Agong under s. 6(2) was not communicated to him at any time.

I shall consider each of the grounds advanced on behalf of the applicant seriatim.

As to ground (1): The validity of this ground depends upon the assumption that the applicant was re-arrested on 23 March 1987. But, as I have already indicated, there is more than sufficient evidence showing that the applicant was re-arrested not on 23 March 1987 as contended for on his behalf but on 23 May 1987. Having regard to the fact that the detention order took effect on 20 June 1987, I find there has been no contravention of s. 3(3).

As to ground (2): Subsequent to Counsel taking this new point that there was no evidence before the Court that the applicant had been produced before a Magistrate within 24 hours following his initial arrest on 24 March 1987, Senior Federal Counsel who appeared for the

respondents, had filed a supplementary affidavit affirmed to by Inspector Mohd Isa bin Ujang on 21 March 1989 (encl. 16), which showed clearly that the applicant had in fact been produced before a Magistrate at Sitiawan, Perak, on 24 March 1987, who had ordered that the applicant be detained for a period of 7 days pursuant to the provisions of s. 117 of the Criminal Procedure Code. Counsel for the applicant did not seek to controvert these averments. Accordingly, I find that there had been no contravention of 5(4).

As to ground (3): Counsel for the applicant conceded that if, as I find was the case, the applicant's re-arrest under s. 3(1) was effected on 23 May 1987, the crucial question as regards this part of the case was: Does s. 6(1) override s. 5(2A)?

For convenience, I shall reproduce the provisions concerned:

Section 5(2A):

> Notwithstanding the provisions of art. 151(1)(b) of the Constitution, a citizen detained in pursuance of an order made under s. 4(1) may be detained, without any representations made by him under art. 151(1)(a) of the Constitution having been considered, and without recommendations having been made thereon, by an Advisory Board constituted for the purpose of that Article, for a period of three months commencing immediately after the sixtieth day following the date of his arrest under s. 3.

Section 6(1):

> Whenever any person has made any representations under s. 5(1) to an Advisory Board, the Advisory Board, shall within three months of the date on which such person was detained, consider such representations and make recommendations thereon to the Yang di-Pertuan Agong.

Article 151(1)(b)

> (substituted for the previous para. (b) with effect from 27 August 1976, by the Constitutional Amendment Act 1976, s. 40)
>
> No citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in cl. (2) has considered any representations made by him under para. (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such longer period as the Yang di-Pertuan Agong may allow.

By way of background the following legislative history is noteworthy.

The previous art. 151(b) provided that a citizen could not be detained for more than three months from the date when such person was detained unless the Advisory Board has considered the representations of the detainee and has made recommendation thereon to the Yang di-Pertuan Agong.

But, by s. 5(2A), which was deemed to be added with effect from 16 May 1969 by ss. 1(2) and 2(a) of the Emergency (Public Order and Prevention of Crime) (Amendment) Ordinance 1969, ("the Amending Ordinance") promulgated in November that year and published the following month in the Gazette, notwithstanding the provisions of art. 151(1)(b) of the Constitution, a citizen detained in pursuance of an order made under s. 4(1) may be detained without any representations made by him under art. 151(1)(a) of the Constitution having been considered and without any recommendations having been made thereon, by an Advisory Board, for a period of three months commencing immediately after the sixtieth day following the date of his arrest under s. 3.

Then, with effect from 27 August 1976, art. 151(1)(b) in the form it now takes (as reproduced above) was substituted by the Constitution (Amendment) Act 1976 (No. A354), s. 40.

I must now address the issue which arises for decision regarding this part of the case.

The problem which faces the respondents is that s. 5(2A) makes no mention of s. 6(1) which provides that whenever any person has made any representations under s. 5(1) to an Advisory Board, it shall within three months of the date on which such person was detained, consider such representations and make recommendations thereon to the Yang di-Pertuan Agong.

Clearly, therefore, there is a conflict between s. 5(2A) on the other hand and s. 6(1) on the other, with the result that the question which arises acutely for decision is which of these provisions should prevail over the other. In order to answer this question, I must ask another question, namely, can I fill the omission in s. 5(2A) to refer to s. 6(1)? This is a question which lies at the heart of statutory interpretation and has generated as much heat as light in the United Kingdom as would appear from certain decisions to which I shall presently refer.

In 1946, the House of Lords held in unmistakably clear terms, that Judges could not fill a gap in legislation. Lord Simonds said in *IRC v. Ayrshire Employers Mutual Insurance Association Ltd.* [1946] 1 All ER 637, 641:

> The section (under discussion) is clearly a remedial section ... It is at least clear what is the gap which is intended to be filled, and hardly less clear how it is intended to fill that gap. Yet I can come to no other conclusion than that the language of the section fails to achieve its apparent purpose and I must decline to insert words or phrases which might succeed where the draftsman failed.

And in 1952, Lord Simonds speaking for the House of Lords when dealing with a general statute in *Magor St Mellons Rural District Council v. Newsport Corporation* [1952] AC 189 and said that for Judges to fill in a gap was "a naked usurpation of the legislative function under the thin guise of interpretation".

But, nearly 30 years later, Lord Simond's approach came under severe attack by Lord Diplock in *Fothergill v. Monarch Airlines* [1981] AC 251, 280 who described it as a "narrowly semantic approach which had left an unhappy legacy".

I shall next refer to three Houses of Lords decisions in the first of which the Lords filled a gap whilst in two others they declined to do so.

In *Fothergill v. Monarch Airlines* (*ibid*), the question for decision was the meaning of the word "damage" in an Article of the Warsaw Convention which provided:

> In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and at the latest, within seven days from the date of receipt of the baggage.

It was argued for the plaintiff who sued the airline, that the Article only applied to damage done to his suitcase, in respect of which a complaint had been made in good time, but not in respect of the loss of a shirt in the suitcase, in respect of which no complaint had been made for over three months. Accordingly it was contended that no time bar applied in respect of the loss of the shirt. The Court of Appeal by a majority upheld the plaintiff's submission, taking the view that damage meant physical damage and did not include partial loss of contents. So, despite the lateness of the claim, the defendant airline was held liable for the missing shirt.

However, on appeal to the House of Lords, the decision of the Court of Appeal was reversed. Their Lordships held that the word "damage" in the Article included "partial loss of contents". In other words, they filled in a gap in the Article by reading it as if it said "in the case of

damage or partial loss of contents". They justified the position they took by reliance on a purposive interpretation in order to produce a result that accorded with good sense.

Lord Scarman said at p. 290:

> If, therefore, the literal construction be legitimate, I would dismiss the appeal. But, in my judgment, it is not. It makes commercial sense to apply, if it be possible, the same time limits, for giving notice of a complaint of partial loss of contents as for one of physical damage: and I am equally in no doubt that it is the duty of the English Courts to apply, if possible, an interpretation which meets the commercial purpose of the Convention. In my judgment, such an interpretation is possible.

In the two later cases, however, the House of Lords refused to fill in a gap. The first - *R. v. Barnet London Borough Council, ex parte Nilish Shah* [1983] 2 WLR 16 - concerned students from overseas who were claiming as of right to have their university fees paid by local authorities.

Under the Education Act 1962, and the relevant Regulations, a local authority was under a duty to pay an award to a student who is "ordinarily resident" in its area during the three years before the commencement of his course. The crucial question was whether the plaintiffs were "ordinarily resident" in the areas concerned during the three year period. In their literal meaning the words "ordinarily resident" mean that the person must be habitually and normally resident, apart from temporary or occasional absences of long or short duration. That was true of one of the students named Akbarali. He was habitually and normally resident in Chelsea, even though his home was in Pakistan and he went back there occasionally for holidays.

The Court of Appeal refused to accept the literal meaning and rejected Akbarali's claim. In so holding Lord Denning said at p. 720:

> In these circumstances, I think we must abandon our traditional method of interpretation. The rebuffs in *Magor and St Mellons Rural District Council v. Newport Corporation* [1952] AC 189 no longer hurt us. We must ourselves fill in the gaps which Parliament has left. We must do our best to legislate for a state of affairs for which Parliament has not legislated. We must say what is the meaning of the words "ordinarily resident" in the context of the situation brought about by the Immigration Act 1971.

Lord Denning was no doubt influenced by what Lord Justice Ormrod had said when the case came before the Divisional Court: ([1982] QB 688, 704):

> We are fortified in our construction of this regulation by the reflection that it is almost inconceivable that Parliament could have intended to bestow major awards for higher education, out of public funds, on persons permitted to enter this country on a temporary basis, solely for the purpose of engaging in courses of study at their own expense. Such an improbable result is not to be accepted if it can properly be avoided.

However, on appeal to the House of Lords, their Lordships overturned the decision of the Court of Appeal and held that overseas students were "ordinarily resident" for the three years in England and that as a matter of construction of the relevant legislation they were entitled to a grant.

Lord Scarman who spoke for the House said that the Court of Appeal were influenced by their own views of policy and by the immigration status of the students.

His Lordship continued:

> The way in which they used policy was, in my judgment, an impermissible approach to the interpretation of statutory language. Judges may not interpret statutes in the light of their own views as to policy. They may, of course, adopt a purposive interpretation if they can find in the statute read as a whole, or in material to which they are permitted by law to refer, as aids to interpretation, an expression of Parliament's purpose or policy. But that is not this case. The Education Act's only guidance is the requirement contained in the Regulations that, to be eligible for a mandatory award, a student must have been ordinarily resident in the United Kingdom for three years. There is no hint of any other restriction, provided, of course, he has the education qualifications and his conduct is satisfactory.

The next case was *Griffiths v. Secretary of State for the Environment* [1983] 2 WLR 172. The plaintiff Griffiths desired to develop his land but the Secretary of State had refused planning permission. Griffiths was dissatisfied with the decision. The statute gave him six weeks from the date on which "action is taken "by the Secretary of State. The House of Lords, by a majority, held that "the action" was taken at the moment when the proper officer in the department put the stamp on the decision - letter. That date was held to be final even though the letter was not posted.

After careful consideration, I would construe s. 5(2A) by reliance on "a purposive interpretation in order to produce a result which accords with good sense."

It is manifestly clear that the intention of Parliament in inserting s. 5(2A) was to extend the time for the Advisory Board to consider and make recommendations to the Yang di-Pertuan Agong from within three months from the date on which such person was detained (as provided under the previous art. 151(1)(b) in force until 26 August 1976) to a period of three months commencing immediately after the sixtieth day following the date of his arrest or, in other words, five months from the date of his arrest. Indeed, Counsel for the applicant conceded as much during the argument but contended that the real point was whether Parliament had succeeded in achieving its apparent purpose and it was his submission that it had not. To emphasise the point, Counsel argued that in a matter so serious as the deprivation of the liberty of the subject, Parliament had to make its intention clear leaving nothing to inference.

It was further argued that s. 6(1) overrides even art. 151(1) because:

(a) the Ordinance, of which s. 6(1) forms an integral part, was promulgated under art. 150(2) of the Constitution,

(b) by art. 150(6) of the Constitution, no provision of any ordinance promulgated under art. 150 shall be invalid on the ground of inconsistency with any provision of the Constitution, and

(c) there was an inconsistency between the present art. 151(1)(b) (substituted with effect from 27 August 1976 by the Constitution (Amendment) Act 1976, s. 40) and s. 6(1), since the former provides that the time limited for the Advisory Board to consider and make recommendations to the Yang di-Pertuan Agong upon any representations by a detainee, shall be within three months from the date of the receipt of such representations or such longer period as the Yang di-Pertuan Agong shall allow, whereas, the latter provides that it shall be within three months of the date on which such person was detained.

On this basis, it was argued that since, on the facts, it was common ground that the period of three months stipulated under s. 6 (1) had been exceeded, the applicant was entitled to succeed on this ground alone.

At first blush, I was much impressed by this branch of Counsel's submissions, which to me, seemed his strongest point. But reflection reveals that it will not withstand security.

Now, it is clear beyond argument that s. 6(1) is merely the progeny of the previous art. 151(1)(b) which was the present provision and if, as is accepted, that s. 5(2A) overrides even the present art. 151(1)(b) then, it must follow by necessary implication, that it also overrides s. 6(1). Once this reasoning, is accepted as correct, then the inference that the draftsman had, in enacting s. 5(2A), by mistake overlooked referring to s. 6(1), becomes inevitable and the applicant's submission loses all its sting.

It follows, therefore, that I would answer the question posed earlier: "can I fill the omission in s. 5(2A) to refer to s. 6(1)?" in the affirmative.

That being the view I take on the question of construction, I must see whether on the facts found, there was a violation of s. 5(2A). In this context the following dates are material:

(a) on 23 May 1987, the applicant was arrested.

(b) on 29 September 1987, the representations made by the applicant were considered by the Advisatory Board, and

(c) on 12 October 1987, the Advisory Board made its recommendations to the Yang di-Pertuan Agong; that is to say, well within the five month period limited by s. 5(2A) which ended on 23 October 1987.

Accordingly, this ground fails.

As to ground (4): My attention was directed by Counsel for the applicant to the fact that although it appeared from the affidavit of Encik Jasmi bin Abdul Majid, Assistant Secretary attached to the Ministry of Home Affairs, affirmed to on 9 March 1989 (encl. 10) that the Minister had received the direction from the Yang di-Pertuan Agong on 7 January 1988, the same was never communicated to the applicant though the fact of receipt by the Minister of the decision of the Yang di-Pertuan Agong agreeing with the recommendations of the Advisory Board (as opposed to the decision itself) was communicated to the applicant's solicitors, and that too, as late as 11 November 1988 - some ten months later - see Ex. KS1 to encl. 13.

It was argued that although there was no express requirement under the Ordinance or the Constitution that the applicant be informed of the direction or decision of the Yang di-Pertuan Agong under s. 6(2), such a requirement was to be silently implied. Moreover, receipt by the applicant of the actual direction or decision of the Yang di-Pertuan Agong (and not merely receipt of information as to the fact of such direction or decision) within a reasonable time of its making, was crucial because only then would the applicant know, if the Advisatory Board had made its recommendation within the period limited by law.

In support of his contention that service upon the applicant of the decision or direction of the Yang di-Pertuan Agong under s. 6(2) within a reasonable time of its making was essential, Counsel cited the following passages in the judgment of Reddy J, when speaking for the Supreme Court, in the case of *D.S. Roy v. State of West Bengal* [1972] AIR SC 1924 @ 1930, 1931:

> Whatever may be the position under the Jammu & Kashmir Act under the Act which we are considering as pointed out earlier the State Government has to confirm the opinion of the Board that there is cause for the detention of the person concerned which confirmation cannot purely be a mental act, a subjective one but must result in an objective action, namely, that

it should be recorded in writing. Though there is no provision in the Act an order of confirmation which has the effect of extending the period of detention beyond the mandatory period of three months must be made known to the detainee. In our view there is no warrant or justification for an order confirming the detention on the opinion of the Board which has the effect of extending the period of detention beyond the mandatory period of three months must be made known to the detainee. In our view there is no warrant or justification for an order confirming the detention on the opinion of the Board which has the effect of extending the period of detention remaining in the files of the executive without the same being communicated to the person most concerned - the detainee - whose freedom has been subjected to jeopardy. He is entitled to know that the Board had considered his representation as well as his personal submissions if he has chosen to appear before it and that it had been found that there was sufficient cause for his detention and that the State Government had agreed with it ... Nevertheless the communication must be within a reasonable time. What is reasonable time must necessarily depend upon the circumstances of each case. The effect of non-communication, however, may be an irregularity which does not make the detention otherwise legal, illegal. In *Biren Dutta's* case [1964] 8 SCR 295 = (AIR 1965) SC 596) the Court was of the view that though under r. 30-A(8) there is nothing to indicate that the appropriate authority should communicate to the detainee the decision to extend the period beyond three months, "it is desirable and it would be fair and just that such a decision should in every case be communicated to the detainee." In this case there is no allegation that the detainee suffered any prejudice by the delay and in the absence of such an allegation the State is justified in its submission that there may be sufficient grounds for the delay in not communicating it within a reasonable time should the communication itself be considered by this Court to be unduly delayed.

In my opinion, although there is no express requirement either in the Constitution or in the Ordinance or elsewhere, an order or direction of the Yang di-Pertuan Agong under s. 6(2), agreeing with the recommendations of the Advisory Board and thereby extending the period of the ditainee's detention beyond the period of five months after the date of his arrest provided under s. 5(2A), must be made known to the detainee or his solicitors within a reasonable time of its making so as to enable him to take such steps as he may deem fit to seek redress in a Court of law. What is reasonable must depend upon the circumstances of each case and non-compliance with this requirement, may or may not vitiate his detention, depending on whether he has suffered prejudice thereby. In this context, I consider it is desirable that the detainee be not merely informed of the direction or decision of the Yang di-Pertuan Agong but that he be served with a copy thereof, so that he may know, if the Advisory Board had made its recommendations within a period limited by law as it is more than probable that such direction or decision would contain a recital as to the date when the recommendations were made.

In the present case, I agree that there had been a failure to inform the applicant or his solicitors within a reasonable time of the making of the order or direction of the Yang di-Pertuan Agong aforesaid, considering that there had been an unexplained delay of ten months, but the question central to this ground is whether the applicant had suffered any prejudice thereby.

To answer this question, it is, in my opinion, important to consider the position at the time the applicant knew all that he had to know and he was represented by experienced Counsel. The argument that the Advisory Board had not made its recommendations within the period limited by law has been found by me to be untenable, so I am unable to see what prejudice the applicant has suffered. As O'Connor LJ put it in *Reg. v. Foreign Secretary, ex parte Everett* [1989] 2 WLR 224:

Where the Court finds itself in that position, namely that the applicant (for judicial review of a refusal of the Home Secretary to issue a new passport) had suffered no justice and that to grant the remedy would produce a barren result there are no grounds for granting relief.

Accordingly, this last ground also fails. In all the circumstances, I am compelled to the conclusion that the application for *Habeas Corpus* must be denied and I would accordingly dismiss the same.

Also found at [1989] 2 CLJ 605